



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2004

Ms. Sylvia Hardman  
Deputy Commissioner  
Legal Services  
Texas Rehabilitation Commission  
4900 North Lamar, Suite 7300  
Austin, Texas 78751-2399

OR2004-0426

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194468.

The Texas Rehabilitation Commission (the "Commission") received three requests for information about individuals who have applied for social security disability benefits. You inform us that the Commission has forwarded the requests to Disability Determination Services ("DDS") for processing in accordance with the rules and policies of the Social Security Administration. You claim that the requested information is not subject to the Public Information Act ("PIA" or "Act"), chapter 552 of the Government Code. You also argue that the requested information is not subject to the PIA because the requestors seek answers to questions and that responding to the requests would require DDS to create a new compilation of information. We have considered your arguments and reviewed the submitted information. We have also considered the requestors' comments. *See* Gov't Code § 552.304 (permitting person to submit comments to attorney general during open records process). Two requestors claim a right to the requested information under section 552.023 of the Government Code.

You argue that the requested information is not subject to the PIA because it does not meet the Act's definition of public information. The Act generally requires all Texas governmental bodies to give any requestor access to or copies of requested public information. *See id.* §§ 552.021, .221. The Commission is a governmental body subject to

the PIA. *See id.* § 552.003(1)(A)(i). As part of the Social Security Administration (the “SSA”) disability insurance program, the Commission, through its DDS division, is the state agency in Texas that is responsible for performing the disability determination function of the SSA Commissioner. *See* 42 U.S.C.A. § 421(a)(1), 20 C.F.R. §§ 404.1613, 404.1633. Section 552.002(a) of the Government Code, which defines “public information,” reads as follows:

(a) In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, under section 552.002(a), all information the Commission collects, assembles, or maintains under a law or ordinance or in connection with the transaction of official business is public information subject to the PIA. In addition, information another entity collects, assembles, or maintains for the Commission and the Commission owns the information or has a right of access to it, is likewise public information subject to the PIA. *See* Open Records Decision Nos. 558 (1990), 534 (1990). However, you argue that because the SSA has promulgated regulations that govern the disclosure and use of disability program records, the DDS records at issue are not subject to the PIA.

Under the federal regulations governing the social security disability program, a state agency makes determinations of disability with respect to all persons in the state, except for those cases in a class specifically excluded by the SSA’s guidelines. *See* 42 U.S.C.A. § 421(a); 20 C.F.R. § 404.1613. The SSA must provide each state agency with written guidelines necessary to carrying out its responsibilities in performing the disability determination function and each state agency must comply with the SSA’s written guidelines. *See id.* 42 U.S.C.A. § 404.1633; *see also id.* § 421(a)2). In particular, “[t]he State will comply with the confidentiality of information, including the security of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 404.1633).” 20 C.F.R. § 404.1631. Thus, two conclusions can be drawn from a review of these regulations. First, since the Commission is the Texas agency performing the SSA disability determination function, the Commission must follow the federal guidelines in making disability determinations. Second, federal law governs the disclosure and use of the Commission’s DDS disability program records. However, these conclusions do not transform the Commission’s records into the records of a federal agency. *Cf.* Open Records Decision No. 584 (1991) (Medicaid client records of Texas Department of Human Services, agency responsible for administering federal welfare programs under the Social Security Act, subject to restrictions under federal law, yet held subject to PIA). The records are nevertheless

“collected, assembled and maintained by” the Commission even when the Commission’s DDS division is performing the disability determination function under federal law. *See* Gov’t Code § 552.002(a); Open Records Decision No. 549 at 3 (1990) (“virtually all information in the physical possession of a governmental body is ‘public information’ subject to [PIA]”).

Turning to the remaining arguments, we note that both the Commission and the requestors bring arguments for or against disclosure under the PIA. The Commission argues that responding to the requests would require DDS to create new information and answer questions.<sup>1</sup> The requestor argues that because he is requesting the information on behalf of the individual about whom the information concerns, he has a right to obtain the information under section 552.023 of the PIA.<sup>2</sup> However, while we find that the requested information is public information under the PIA, we agree with the Commission that the federal regulations govern the disclosure of the requested information. *Cf.* Open Records Decision No. 599 (1991) (requiring Texas Employment Commission to follow federal regulations governing disclosure of wage information). Statutes governing access to a specific subset of information held by a governmental body prevail over the Act. *See* Open Records Decision Nos. 598 (1991) (access to medical records governed by Medical Practice Act, rather than Act), 478 (1987) at 2-3 (Act does not govern special rights of access granted under other statutes); *Cf. English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (federal law preempts state law to the extent that state law actually conflicts with federal law). Section 404.1631 of the federal regulations requires the DDS division to comply with the confidentiality of information, including the security of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines. 20 C.F.R. § 404.1631. Consequently, because the federal regulations determine the Commission’s authority and duty to release these records to the requestors, the Commission’s and the requestors’ arguments under the PIA are not relevant to the access question before us.

Thus, in conclusion, under section 404.1631 of the federal regulations, we find that the Commission’s DDS division must release or withhold the requested information in

---

<sup>1</sup>The Act does not require a governmental body to answer questions, *see* Open Records Decision No. 555 (1990), or to create new information in response to a request, *see* Open Records Decision No. 452 at 2-3 (1986). However, a governmental body must make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 9 (1980).

<sup>2</sup>Under section 552.023, a person may have a special right of access to information which is withheld from disclosure to the general public pursuant to laws intended to protect that person's privacy interests. However, where information is withheld from public disclosure pursuant to laws intended to protect more than privacy interests, section 552.023 may not be invoked. *See* Open Records Decision Nos. 587 (1991) (because confidentiality provisions of former Family Code section 34.08 are intended to protect law enforcement as well as privacy interests, former section 3B of Act cannot operate to give any individual special right of access), 565 (1990) (provisions of Medical Practice Act making medical records confidential are intended to protect more than just the privacy interests of patient).

accordance with the records requirements of pertinent federal law and the SSA's written guidelines for the confidentiality of disability claimant information. *See id.*

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 194468

Enc: Submitted documents

c: Mr. Carl Weisbrod  
Morgan & Weisbrod, L.L.P.  
P.O. Box 821329  
Dallas, Texas 75382  
(w/o enclosures)

Mr. John Heard  
Heard & Smith, L.L.P.  
3737 Broadway, Suite 310  
San Antonio, Texas 78209-6547  
(w/o enclosures)

Mr. Bob Richardson  
The Bob Richardson Law Firm  
812 San Antonio Street, Suite 300  
Austin, Texas 78701  
(w/o enclosures)